144-119

RECORD, CASE No. 13,234.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 188.

LAURENT LACASSAGNE, APPELLANT,

vs.

FRANÇOIS CHAPUIS, TESTAMENTARY EXECUTOR OF JEANNE CAROLINE CAVÉ CAVAILHEZ, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 8, 1888.

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1 *Bill of Complaint.*

To the hon. the circuit court of the United States for the western district of Louisiana:

Laurent Lacassagne, an alien and a citizen of the Republic of France, brings this his bill of complaint against Francois Chapuis, a citizen and subject of the Republic of Switzerland, in both his capacity of testamentary executor of Jeanne Caroline Cavé Cavaillhez and in his individual capacity, residing in the city of New Orleans, in the eastern district of Louisiana; and your orator, complaining, says that he is the owner of a certain plantation, situated in the parish of Vermillion, State of Louisiana, lying and being on the east side of Bayou Vermillion, having a front of ten arpents on said bayou by forty arpents in depth, with the buildings and improvements thereon, bounded on the west by Bayou Vermillion, on the east by public lands, on the south by Emile Romero, and north by property of Miller, Lyon & Co., together with all the mules, horses, carts, cows, wagons, tools of husbandry, and other plantation equipment thereon.

Your orator shows that he acquired the ownership of said property, with Albert G. Maxwell, of this district, in judicial proceedings, prosecuted in the district court for the parish of Vermillion, in the suit of Albert G. Maxwell *vs.* Marceline Cavailhez, numbered 6 on the docket of said court, and by sheriff's deed signed by Joseph S. Nunez, sheriff of said parish of Vermillion, dated August 15th,
1885. A duly certified copy of said deed is hereto attached,
2 made part hereof, and marked Exhibit A. The said suit is referred to and a transcript thereof will be produced on the trial of this cause.

Your orator shows that he acquired the interest of Albert G. Maxwell in said property by act of sale passed before George A. Simmons, deputy clerk of the district court, *ex officio* recorder, and notary public, duly commissioned and qualified, in and for the parish of Vermillion, on the 22nd day of October, 1885, as will fully appear from a duly certified copy of said act of sale, hereto attached, made part hereof, and marked Exhibit B; that thereby the whole of said plantation became the property of and was vested in your orator.

Your orator further shows that one Jeanne Caroline Cavé Cavaillhez, alleging herself to be a citizen of France and to be the widow of Baptiste Cavaillez, deceased, did, on or about the 5th day of March, 1884, institute a suit in equity in this honorable court, sitting at Opelousas, numbered 33 on the docket of said court, wherein said Jeanne Caroline Cavé Cavailliez was complainant and Marceline Cavailhez, widow of C. H. Remick, in her own right and as tutrix of her minor children, Frank C. Remick, Mary Isabella Remick, Clement Arthur Remick, and Marceline L. Rita Remick, and as tutrix administering the estate of C. H. Remick, deceased, was defendant; that in said suit the said Jeanne Caroline Cavé Cavaillez claimed,

as the widow in community of Baptiste Cavaillez, to be
3 the owner of one undivided one-half interest in the above-described plantation, and that the other one undivided one-half interest in said plantation was burdened with a tacit mortgage to secure the sum of five thousand three hundred and ten dollars ($5,310), paraphernal property, due her by the succession of Baptiste Cavailhez; that the prayer of complainant's bill is that the aforesaid plantation be decreed to be still the property in indivision of the estate of Baptiste Cavailhez; that your oratrix (meaning Jeanne Caroline Cavé Cavailhez) be recognized as the owner of one undivided one-half of said plantation, and that she be recognized as a mortgage creditor of said Baptiste Cavailhez in the sum of five thousand three hundred and ten ($5,310) dollars, with legal interest from judicial demand on the undivided half thereof belonging to said Baptiste Cavailhez; that process was prayed for against Marceline Cavailhez, widow of C. H. Remick, in her individual capacity, as tutrix of her minor children, and as tutrix administering the estate of C. H. Remick, and against no other person; that the bill nowhere avers that the said Marceline Cavailhez, widow of C. H. Remick, was in possession of said plantation when this suit was filed, either for herself individually or as tutrix for her minor children or as tutrix administering the estate of C. H. Remick, deceased, or by agent or employee.

Your orator further shows that he and Albert G. Maxwell
4 were mortgage creditors of said Marceline Cavailhez, widow of said C. H. Remick, deceased, and that their mortgage was duly recorded in the mortgage office of the parish of Vermillion at the time and before said suit numbered 33 on the docket of this court, sitting at Opelousas, was instituted, and that said recordation operated as notice to said Jeanne Caroline Cavé Cavailhez and all the world, and that no right nor interest of your orator or of Albert G. Maxwell could be passed on in said suit or be affected by the decree therein made without their being made parties to said suit.

Your orator further shows that this hon. court was without jurisdiction to entertain said suit numbered 33 on the docket of this hon. court, sitting at Opelousas; and your orator is informed and believes and so charges that said Jeanne Caroline Cavé Cavailhez, the plaintiff therein, was not a citizen of France, as she falsely alleged herself to be to give this hon. court jurisdiction of the parties, but was a citizen of Louisiana, residing at New Orleans; that if it be true, as your orator has been informed and believes and charges, it was a fraud practyced upon this court, and that the proceedings in said suit No. 33 on the docket of this court are utterly null and void, and should be so pronounced and decreed to be.

Your orator further shows that the judgment rendered in said cause on the — day of January, 1886, adjudged and decreed "that Jeanne Caroline Cavé Cavailhez be recognized as the
5 lawful widow of Baptiste Cavailhez and as such be entitled to and decreed to be the owner of the undivided half of the property above described," together with other property, "and that Jeanne Caroline Cavé Cavailhez have judgment against the estate

of Baptiste Cavailhez in the sum of five thousand three hundred and ten ($5,310) dollars, with legal interest from February 24th, 1884, and that her mortgage to secure the said sum and interest upon the property of Baptiste Cavailhez, to take effect from the 13th of April, 1863, be recognized and enforced. The record in said cause No. 33 on the docket of this court is referred to, to be used on the trial of this cause. That thereafter, on the 2nd day of February, 1886, a petition was presented to this court for a writ of possession under said decree and said petition was granted, and that a writ of possession did issue to the United States marshall for this district; that by said writ the said marshall was ordered "to eject defendant (meaning Marceline Cavailhez, widow of C. H. Remick) and those who may be holding said property described as aforesaid under the said defendant by private deed of transfer or otherwise since the institution of the aforesaid suit, to wit, —, and during the pendency of said suit, and you are further ordered to put the said Jeanne Caroline Cavé, widow, in full possession of the afore-described property, as provided by law."

6 Your orator shows that said suit was not warranted by the decree which had been rendered in said cause and was not a proper writ, and that the same was issued improvidently and upon a wrongful suggestion and is null and void; that said pretended writ was executed on the 5th day of February 1886, "by serving the writ and copy of judgment on Alfred Armenter, who was living in the house and had charge of the property, and he being a major, and I took possession of the said plantation and improvements and then placed them in possession of F. Brulard, as the agent of Jeanne Caroline Cavé, widow of Baptiste Cavailhez," as will appear by the return of S. C. Price, deputy U. S. marshall, filed February 8th, 1886, in said record.

Your orator shows that he was in possession of said plantation, as owner, by his laborers, servants, and employees, when said deputy United States marshall pretended to execute the aforesaid writ, and shows to this hon. court that one F. Brulard did come upon said plantation and does now occupy a portion of the dwelling on said plantation, but that the carpenter and laborers on said plantation have been continuously and still are in service and pay of your orator, and that your orator is deterred from going upon said plantation and exercising his rights of ownership by the violence and threats of said F. Brulard. Your orator claims to be in possession,

7 though his possession is disturbed and interfered with by said Brulard, acting under direction of and advice from the defendant, Francois Chapuis.

Your orator avers that he has not been a party to any suit and is not bound by any order of a court until he has an opportunity to be heard.

Your orator shows that though the acts were in the name of the deceased Jeanne Caroline Cavé Cavailhez, yet your orator is informed and believes & so charges that she was prompted and instigated to do all that she did do by the defendant herein, Francois

Chapuis, who was named her testamentary executor and universal legatee under his last will & testament.

Your orator charges that the said Brulard is an agent and under the control of said Francois Chapuis, defendant, and of this hon. court; that the alleged writ under which he has taken partial possession is void; that the whole proceeding, number 33 on the docket of this court, is null & void for want of jurisdiction of the parties; that the plantation is deteriorating in value and the season for planting and preparing for crops is passing and irreparable injury is being done to plaintiff; that an injunction *pendante lite* is necessary to restrain the defendant, Francois Chapuis, as testamentary executor & individually, the agents & employees, from interfering with the possession of plaintiff or molesting him or his agents and servants on said plantation; that — the said plantation, pending a motion to grant said injunction *pendante lite*, a restraining order should issue as provided by law; the said injunction to be
8 made perpetual on a final hearing. Your orator avers that he is without a full, complete, *a* adequate remedy at law, and must resort to a court of equity to have his rights determined and secured.

Wherefore your orator prays that the said suit numbered 33 on the docket of this court, sitting at Opelousas, may be declared an absolute nullity and all the proceedings under it void, because there was no jurisdiction in this court over the parties; that in case said suit is decreed to have been properly brought in this court between the parties thereto, then that said suit be decreed to have no force nor effect against the plaintiff herein, he not having been a party to said suit No. 33 and the decree not operating against him, and that the writ of possession under which one S. C. Price is acting as deputy United States marshal*l* and one F. Brulard has been partially placed in possession is absolutely null and void and the possession of said Brulard illegal, and that he be ordered to vacate the premises occupied by him on said plantation and remove therefrom forthwith, and that an injunction *pendante lite* do issue from this court, to be made perpetual at the final hearing, commanding Francois Chapuis, testamentary executor & individually, his agents, servants, and employees generally, and one F. Brulard in particular, to desist from interfering or molesting plaintiff in the posses-
9 sion of said plantation or his laborers, servants, and employees, and pending a motion to grant said injunction *pendante lite* that a restraining order issue, as provided by law, and for general relief.

And for subpœna to be directed to Francois Chapuis, as testamentary executor of Jeanne Caroline Cavé Cavailhez, and individually, commanding him to appear by a certain time in a certain place, to plead, answer, or demur to the bill under a penalty to be fixed, and to stand to, perform, and abide such further order and decree as may seem proper to this hon. court.

(Sig.) LAURENT LACASSAGNE.

A. GOLDTHWAITE &
W. S. BENEDICT, *Solicitors.*

THE STATE OF LOUISIANA, }
City of New Orleans. }

On this the 10th day of April, 1886, before me personally appeared Laurent Lacassagne and made oath that he has read the above bill and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

(Sig.) LAURENT LACASSAGNE.

Sworn to and subscribed before me this 10th day of Ap'l, 1886.

(Sig.) K. LOEN,
Comm'r U. S. Cir. Court, East. Dist. of La.

10 Endorsement: No. 139. U. S. circuit court, western dist. of La. In equity. Laurent Lacassagne *vs.* F. Chapuis, testamentary executor & individually. Bill of complaint. Filed April 15th, 1885. (Sig.) J. B. Beattie, d'y cl'k. A. Goldthwaite & W. S. Benedict, sol'rs for compl't.

By consent this case will be filed at Monroe, and all the notices required in same are, by consent, waived, and the court, by consent, will hear the matter at New Orleans at a day to be fixed by the judge hereafter.

(Sig.) ALECK BOARMAN, *Judge.*

Copy of Subpœna in Chancery.

UNITED STATES OF AMERICA:

(Eagle.)

The President of the United States to the marshal for the western district of Louisiana, Greeting:

11 You are hereby commanded to summon Francois Chapuis, testamentary executor of Jeanne Caroline Cavé, widow of Baptiste Cavailhez, and Francois Chapuis individually, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden at the city of Opelousas, Louisiana, on the first Monday of June, 1886, then and there to answer a bill in chancery filed against them, wherein Laurent Lacassagne is complainant and said Francois Chapuis, testamentary executor of Jeanne Caroline Cavé, widow of Baptiste Cavailhez, and Francois Chapuis are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Monroe, La., this 17th day of April, in the year of our Lord one thousand eight hundred and eighty-six, and the 110th year of American Independence.

(Sig.) J. B. BEATTIE, *D'y Clerk.*

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court on or before the first Monday of June, 1886; otherwise the bill may be taken *pro confesso*.

12 Endorsement: United States circuit court. No. 139. L. Lacassagne *vs.* Francois Chapuis, testamentary ex'r, *et al.* Subpœna in chancery.

Marshal's Return on Subpœna in Chancery.

Marshal's return.

Received Apr. 23, 188–, by the U. S. marshal of the eastern district of Louisiana, and on the 5th day of May, 1886, I served a true copy of the within subpœna in chancery on Francois Chapuis, both as an individual and as testamentary executor of Jeanne Caroline Cavé, widow of Baptiste Cavailhez, in person, in the city of New Orleans.

(Sig.) R. B. PLEASANTS, *U. S. M'l*,
By JNO. E. LIVAUDAIS, *Deputy*.

Filed May 24th, 1886.
(Sig.) J. B. BEATTIE, *D'y Cl'k*.

Demurrer.

U. S. Circuit Court, West. Dist. of La. In Equity.

LAURENT LACASSAGNE
vs.
F. CHAPUIS, Testamentary Executor and Individually. } No. —.

13 The demurrer of F. Chapuis, as testamentary executor and individually, defendants, to the bill of complaint of Laurent Lacassagne, the above-named plaintiff.

These defendants, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same *is* therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth that the plaintiff hath not in and by his said bill made or stated such a case as entitles him in a court of equity to any discovery from these defendants or to any relief against them as to the matters contained in the said bill or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the defendants doth demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

(Sig.) LEONARD, MARKS & BRUENN,
(") A. VOORHIES, *Sol'c'rs*.

In our opinion the above and foregoing demurrer is well founded in law.

(Sig.) LEONARD, MARKS & BRUENN, *Sol'c'rs.*
(") ALBERT VOORHIES, *Solicitor.*

STATE OF LOUISIANA, }
City of New Orleans. }

Personally appeared Francois Chapuis, defendant above
14 named, individually and as testamentary executor, who, being duly sworn, says that the above and foregoing demurrer is not interposed herein for any delay.

(Sig.) FS. CHAPUIS.

Sworn to & subscribed before me this 2nd day of July, A. D. 1886.

[Seal M. Voorhies, Notary Public, P'sh of Orleans.]

(Sig.) M. VOORHIES,
Notary Public.

Endorsement: No. 139. U. S. circuit court, western district of Louisiana. In equity. Laurent Lacassagne *vs.* F. Chapuis, testamentary executor and individually. Demurrer. Filed July 5th, 1886. (Sig.) C. Mayo, dp. cl'k.

Plea to Jurisdiction.

U. S. Circuit Court, West. Dist. of La. In Equity.

LAURENT LACASSAGNE
vs.
F. CHAPUIS, Testamentary Executor & Individually. } No. —.

15 The plea of F. Chapuis, testamentary executor and individually, defendants, to the bill of complaint of Laurent Lacassagne, plaintiff.

These defendants, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true in such manner and form as the same are thereby and therein set forth and alleged, for plea to the whole of the said bill saith that, as is alleged and set forth in the bill of complaint herein, the plaintiff, Laurent Lacassagne, is an alien subject of the Republic of France, and these defendants, F. Chapuis, individually and testamentary executor, are alien subjects of the Republic of Switzerland; that the act of March 3rd, 1875, U. S. Statutes, provides for and limits the jurisdiction of this court to certain classes and kinds of causes, as in said aforesaid act fully specified and set forth, and that this honorable court is therefore without jurisdiction in the premises.

All which matters and things these defendants doth aver to be true, and they plead the same in bar of plaintiff's bill, and they pray the judgment of this honorable court whether they should be com-

pelled to make any other or further answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

(Sig.) LEONARD, MARKS & BRUENN, *Sol'c'rs.*
ALBERT VOORHIES, *Solicitor.*

16 STATE OF LOUISIANA, }
City of New Orleans. }

Personally appeared Francois Chapuis, defendant herein, individually and as testamentary executor, who, being duly sworn, says that the above and foregoing is true in point of fact.

FS. CHAPUIS.

Sworn to & subscribed before me this 2nd day of July, A. D. 1886.

[Seal M. Voorhies, Notary Public, P'sh of Orleans.]

(Sig.) M. VOORHIES,
Notary Public.

Endorsement: No. 139. U. S. circuit court, western district of Louisiana. Laurent Lacassagne *vs.* F. Chapuis, testamentary executor and individually. Plea to jurisdiction. Filed July 5th, 1886. (Sig.) C. Mayo, dp. cl'k.

EXHIBIT 1.

UNITED STATES OF AMERICA, }
17 *State of Louisiana, Parish of St. Landry.* }

To A. C. Gibson, U. S. marshal, western district of Louisiana, or any of his deputies, Greeting:

Whereas, on the 11th day of January, 1886, the Hon. Aleck Boarman, sitting as judge of the fifth (5th) circuit court, western district of Louisiana, at the town of Opelousas, parish of St. Landry, Louisiana, did, in a certain case, entitled—

5th Circuit Court, West. Dist. of La.

JEANNE CAROLINE CAVÉ, Wdo., }
vs. } In Chancery.
MARCELINE CAVAILHEZ, Wdo., *et als.* }

render a judgment and decree, of which a true and correct copy is hereunto annexed and made a part of this writ; and whereas said — was instituted on the fifth day of March, one thousand eight hundred and eighty-four: Now, therefore, three days after service of this writ on Marceline Cavailhez, wdo., etc., defendant in above suit, — she refuses to deliver the property described in the aforesaid judgment to the said Jeanne Caroline Cavé, wdo., or to quit the property fully described in aforesaid judgment, then and in that case—

You are hereby ordered and commanded to eject defendant and those who may be holding said property described as aforesaid

under the said defendant, by private deed of transfer or otherwise, since the institution of aforesaid suit, to wit, March 5th, 1884,
18 and during the pending of said suit; and you are further ordered to put the said Jeanne Caroline Cavé, wdo., in full possession of the aforesaid-described property, as provided by law.

And you are further ordered to execute this writ in all respects as provided by law.

And how you shall have executed this writ make due return to court, as provided by law, and hereon endorse the manner in which you shall have executed the same.

Witness the Hon. Aleck Boarman, judge of said court, this 2nd day of February, 1886.

(Sig.) C. MAYO,
Dp. Clerk U. S. Courts.

Filed Feb. 2nd, 1886.
(Sig.) C. MAYO, *Dp. Cl'k.*

Received the within writ of possession and a copy of judgment on the 3rd Feb., 1886, and I proceeded to the property described in within judgment, in Vermillion parish, and executed the same on the 5th day of Feb., 1886, by serving the writ and copy of judgment on Alfred Armintor, who was living in the house and had charge of the property, and he being a major, and I took possession of said plantation and improvements, and then placed them in the
19 possession of F. Brulard, as the agent of Jeanne Caroline Cavé, widow.

(Sig.) S. C. PRICE,
Dep'ty U. S. Marshal.

Opelousas, Feb. 8th, 1886.

Returned and filed Feb. 10th, 1886.
(Sig.) C. MAYO,
D'p. Cl'k U. S. Courts.

5th Circuit Court, West. Dist. La. In Chancery.

JEANNE CAROLINE CAVÉ, Wdo.,
vs.
MARCELINE CAVAILHEZ, Wdo., etc.

This case came up for trial and the parties adduced their evidence.

The said evidence and the law being in favor of oratrix, Jeanne Caroline Cavé, widow of Baptiste Cavailhez, deceased, as to her claims as surviving widow and creditor of his succession—

It is ordered, adjudged, and decreed:

1st. That the sale made on the 19th of August, 1869, by Baptiste Cavailhez and Ernestine Dioz to Clark H. Remick of the following-described property be annulled and avoided, the said property in said act of sale being described as follows, to wit:

"First. A town lot in Abbeville, parish of Vermillion, being No. 33 of plat of said town, with buildings and improvements, said lot

bounded west by Jefferson street, north by Concordia street, south by lot No. 34, and east by lot No. 41.

20 Secondly. A certain plantation situated on the east side of Bayou Vermillion, in the aforesaid parish (Vermillion), with a front of ten arpents on said bayou by forty in depth, with buildings and improvements, bounded west by Bayou Vermillion, east by public lands, south by property of Numa St. Julien, and north by property of Euclide Roy, together with said plantation, mules, horses mil-*k* cows, carts, wagons, tools of husbandry, and other plantation paraphernalia."

2nd. It is ordered and decreed that the said oratrix and plaintiff in bill, Jeanne Caroline Cavé, widow, be, and is hereby, recognized as the lawful widow of Baptiste Cavailhez, and as such that she be, and is hereby, entitled to and decreed to be the owner of the undivided half of all the property above described.

3rd. It is further ordered that the act of donation or dowry from Baptiste Cavailhez and Ernestine Dioz to Marcelline Cavailhez, made on the 19th of August, 1869, be, and is hereby, decreed to be null and void and of no effect, and that Ernestine Dioz, the mother of defendant, Marcelline Cavailhez, never was the lawful wife of Baptiste Cavailhez.

4th. It is further ordered and decreed that the said oratrix and plaintiff in bill have judgment against the estate of Baptiste Cavailhez in the sum of five thousand three hundred & ten dollars, with

21 legal interest from the 25th day of February, 1884.

That her mortgage to secure the aforesaid sum and interest upon the property of Baptiste Cavailhez, to take effect from the 13th day of April, 1863, be recognized and enforced.

And because the law and the evidence is in favor of the defendant, Marceline Cavailhez, wdo. of Clark H. Remick, and as against the oratrix and plaintiff in bill, as to the reconventional demand for improvements she placed on the plantation—

It is further decreed that the defendant, Marceline Cavailhez, wdo. of C. H. Remick, have judgment against the oratrix for the sum of fifteen hundred dollars; and, to insure the payment thereof, it is further decreed the- she, the said defendant, have a privilege and mortgage on the property above described.

(Sig.) ALECK BOARMAN, *Judge.*

A true copy.

[Seal U. S. Circuit Court (Eagle) for the Western Dist. of La.]

C. MAYO,
Dp. Cl'k U. S. Courts.

Marshal's Return on Writ of Possession.

I further certify that on the 10th day of April, 1886, an alias writ of possession was placed in the hands of the deputy marshal, similar in all respects to the original writ, and the following is a true

22 and correct copy of the return of said d'p. marshal on said alias writ of possession :

"Received the within writ and copy of judgment on the 10th day of April, 1886, and proceeded to the plantation within described, in Vermillion parish, and finding no one on whom to serve the same, except F. Brulard, formerly the agent of Jeanne Caroline Cavé, wdo., and now agent of F. Chapuis, test. ex't'r, in full possession of the aforesaid plantation and its appertunances, and being the same party whom I placed in possession of said plantation on the 5th of February, 1886, I hereby return this writ, together with the copy, this 13th day of April, 1886.

(Sig.) S. C. PRICE,
Dep'ty U. S. Marshal."

Deputy Clerk's Certificate.

OPELOUSAS, *May 24th*, 1886.

I hereby certify that the within and foregoing are true and correct copies of originals on file in my office.

[Seal U. S. Circuit Court (Eagle) for the Western Dist. of La.]

(Sig.) C. MAYO,
D'p. Cl'k U. S. Courts.

Endorsement: A. Return.

EXHIBIT 2.

U. S. Circuit Court, Western Dist. of La.

23 LAURENT LACASSAGNE *vs.* F. CHAPUIS, Executor, &c. } No. 139.

STATE OF LOUISIANA, *Parish of Vermillion.*

Before me, the undersigned authority, appeared Alfred de Armentor, who, being duly sworn, deposes and says:

I was present when the U. S. deputy marshal put Felix Brulard in possession of the Cavailhez plantation, on the 5th of February, 1886, with writ of possession. The office- gave notice to all on the place to vacate, and everybody complied without any resistance or protest, and Felix Brulard was thereupon put in peaceable possession. I am not now living on the Cavailhez place, but since the execution of the writ of possession I have made a contract with Felix Brulard, as agent, to work a part of the place.

his
(Sig.) ALFRED DE x ALMENTOR.
mark.

Sworn to and subscribed before me this 30th day of June, A. D. 1886.

(Sig.) LASTIE BROUSSARD,
Clerk Dist. Court.

[Seal of the Clerk of the Parish of Vermillion, State of Louisiana (Pelican Feeding Young).]

Endorsement: 2. M. de Armentor.

EXHIBIT 3.

U. S. Circuit Court, West. District of La.

LAURENT LACASSAGNE
vs.
F. CHAPUIS.

24 STATE OF LOUISIANA,
Parish of Lafayette.

Before me, the undersigned, justice of the peace of the fourth ward of the parish of Lafayette, appeared Emile Romero, who, being duly sworn, deposes and says: I reside in the parish of Vermillion. The U. S. deputy marshal appeared at my residence on the 5th day of February, 1886, and charged me to deliver unto Felix Brulard the keys and certain accounts, this said Felix Brulard being the duly authorized agend of F. Chapuis. Witness further says that the said Felix Brulard has thereupon taken possession without any op-osi*sision* and has retained the same up to date without any molestation or citation or notice whatsoever.

(Sig.) É. ROMERO.

Sworn to and subscribed before me this 1st day of July, 1886.

(Sig.) A. KAMIG,
Justice of the Peace.

C OF EXHIBIT 3.

I hereby authorize Mr. E. Romero to take full charge of the Remick plantation, now the property of Maxwell & Lacassagne, and see to the just collection of and division of all crops between the present tenants of said plantation & said Maxwell & Lacassagne. We wish the present tenants to know that the ⅓ portion agreement existing at present between outgoing parties & them will be fairly adjusted.

(Sig.) A. G. MAXWELL,
For M. & L.

25 D OF EXHIBIT 3.

D.

Laurent Lacassagne, commission merchant, 212 Gravier street, P. O. box 281.

NEW ORLEANS, *le* 30 *Dec.*, 1887.

Mons. Emile Roméro, Abbeville.

MONS. & AMI: Par la présente Je vous autorise a louer mon Habitation Remick, a des Tennents a la part ou en loyer en argent, *payable d'avance.* Tout locataire louant a la part, sera tenu de se conformer aux ordres du gérant de l'habitation quel qu'il soit, Je desire que

l'habitation soit occupeé par des familles (blancs ou noirs) mais honorables & bon travailleurs et que tous se soumettent a vos désirs ou aux désirs de celui qui pourrait etre le gérant apres vous. Faites pour le mieux jusqu'a ce que j'aille tous la pouvoir & que Je vous donne des pouvoirs absolu.

Espérant Mr. & Ami vous voir sur l'habitation sous peu.

Je suis vt. Sr. & ami,

(Sig.) LAURENT LACASSAGNE.

STATE OF LOUISIANA, }
Parish of Vermillion. }

Emile Romero, sworn, says: I was (running the cotton gin) on the plantation when the U. S. deputy marshal came the first time with the writ of possession. I held the authorization of Maxwell and Lacassagne at first (exhibit marked C), and afterward of Laurent Lacassagne (marked D). Mr. Stanberry was not on the place
26 at that time, nor since. The deputy marshal executed the writ; put Felix Brulard in possession of the whole plantation; ordered all persons holding under Lacassagne to vacate, and afterwards we all made agreements or contracts with Felix Brulard, as agent of Wm. Cavailliez, to wit: Myself, with reference to the cotton gin; Jean Brun, carpenter (who had employed Rand to assist him), to make necessary repairs, and the three laborers, Daniel & Louis Montgomery and A. de Armentor, to work. Since said agreement the said carpenter, Brun, with his employee, Rand, worked under control of Brulard for Mrs. Cavailhez, and after her death for the executor Chapuis; so also did the aforesaid laborers; all of which I know from information given me by the parties so employed themselves, as also that since execution of first writ of possession Mrs. Cavailhez & Mr. Chapuis have, through their agent, F. Brulard, had absolute actual possession of the whole plantation.

(Sig.) E. ROMÉRO.

Sworn to and subscribed before me, the undersigned authority, this 25th day of Mar., 1886, parish of Vermillion.

{ Seal of the Clerk of the Parish of Vermillion, State of Louisiana (Pelican Feeding Young). }

(Sig.) LASTIE BROUSSARD,
Clerk Dist. Court.

Endorsement: 3. E. Romero.

27 EXHIBIT 4.

U. S. Circuit Court, West. Dist. of La.

LAURENT LACASSAGNE
vs.
F. CHAPUIS, Executor, &c. } No. 139.

STATE OF LOUISIANA,
Parish of Vermillion.

Before me, the undersigned authority, appeared Felix Brulard, who, being duly sworn, deposes and says: I am — present residing — Cavailhez plantation in the capacity of agent of Jeanne Cavailhez, at first, and presently of F. Chapuis, executor. I was put in possession by the U. S. deputy marshal on the 5th day of February, 1886, since which time I have held the plantation in said capacity. The marshal executed the writ of possession and found no resistance whatever. He ordered the persons on the place to vacate, and they complied without protest or resistance.

(Sig.) F. BRULARD.

Sworn to and subscribed before me this 30th day of June, A. D. 1886.

{Seal of the Clerk of the Parish of Vermillion, State of Louisiana (Pelican Feeding Young).}

(Sig.) LASTIE BROUSSARD,
Clerk Dist. Court.

STATE OF LOUISIANA,
Parish of Vermillion.

Felix Brulard, sworn, says: My name is Felix Brulard. I was the agent of Mrs. Wm. Cavailhez, and accompanied the deputy U. S. marshal who executed the first writ of possession. He caused
28 the plantation (the Remick plantation) to be vacated, and put me in the actual possession of the whole plantation. Jean Brun, carpenter, was ordered off; and thereupon, by contract with me, he agreed to remain and work for Mrs. Wm. Cavailhez to make some urgent repairs, with the distinct understanding that I, as agent aforesaid, would pay him for all his work from that date. He remained under my supervision, and worked under my directions for some time, when he changed his manner and commenced defying my authority. Subsequently the deputy U. S. marshal came with Mr. Chapuis, executor, to execute a second writ of possession, and then said Brun and his employee, Rand, were turned out, and immediately obeyed, and have not returned since.

When I was first put in possession I found three laborers, Daniel and Louis Montgomery and A. de Armentor, who had been there under my predecessor. They were ordered to vacate by the marshal, but they asked to make contract with the new possessor, represented by me, and they agreed to work under my superintendence

for one year, on contract. They have continuously worked under me on the place. The contract was verbal, in the presence of witnesses, among whom Mr. Romero. At execution of 2nd writ of possession, hearing that the two Montgomery- had made affidavit that they were working for L. Lacassagne, I had the matter
29 squared up by having them ordered off; but they pleaded it was all a mistake and were sorry, so I had the original verbal agreement reduced to writing and had them to sign the same in the presence of witnesses. I do affirm that from the date I received possession from the marshal I have had absolute control of the whole place all the time up to now, without molestation, with the solitary exception of the fraudulent conduct of said carpenter, Brun, who, after working under contract with me for considerable time and having entered there solely with my permission, nevertheless attempted to change his position and to repudiate my authority, as above explained. As to Mr. Stanberry, I know nothing of him in connection with the plantation, and have never been interfered with by him at any time. Carpenter Brun and his man Rand were ordered off by the dep. marshal, and left on the spot at execution of second writ of possession. The executor, Chapuis, was put in possession and myself with him as his agent. Since then L. Lacassagne has never, directly or indirectly, control-ed or attempted to control said plantation, in whole or in part, with the exception, however, of the fraudulent attempt of said Brun to change the position which he then really occupied.

(Sig.) F. BRULARD.

30 Sworn to and subscribed before me, at office, this 25th day of May, A. D. 1886.

{ Seal of the Clerk of the Parish of Vermillion, State of Louisiana (Pelican Feeding Young). }

(Sig.) LASTIE BROUSSARD,
Clerk of the Dist. Court.

Endorsement: 4. F. Brulard.

EXHIBIT 5.

STATE OF LOUISIANA, }
Parish of Vermillion. }

Louis Montgomery and Daniel Montgomery, sworn, says: We are laborers on the Remick plantation, which the U. S. marshal has delivered over to Felix Brulard, agent of Mrs. W'w Cavailhez, when the first writ of possession was executed. Previous to that time we were working under agreement with the agent of Laurent Lacassagne. When Brulard took possession from the deputy marshal we had to leave or contract with him, Brulard, to stay and work on the place. This we did, and after the second writ of possession our agreement, which was at first verbal, was put -to writing. I don't remember what was written in the affidavit made to be used by

Laurent Lacassagne, but the facts as stated here are true,
31 and if the first affidavit does not state the facts as above, then it was a mistake. Everybody knows here that since the marshal's visit we have been working on this plantation under Felix Brulard, who has since had the possession of the place.

(Sig.) LOUIS his x mark. MONTGOMERY.

(Sig.) DANIEL his x mark. MONTGOMERY.

Sworn to & subscribed before me this 25th day of May, A. D. 1886.

[Seal Clerk of Par. of Vermillion.]

LASTIE BROUSSARD,
Clerk of Dist. Court.

Endorsement: 5. Louis Montgomery, Daniel Montgomery.

EXHIBIT 6.

U. S. C. C., Opelousas.

LAURENT LACASSAGNE *vs.* F. CHAPUIS, Tes. & Ind. } No. —.

Exhibit of defendant.

1. Francois Chapuis, sworn, says: I am the executor of estate of W'w Baptiste Cavailhez, and since her death, on March the 6th, A. D. 1886, I have been in the possession of the plantation in dispute as the executor of her estate, and before that I acted as her agent and had Felix Brulard charged to go and take possession actually & in person from the United States marshal*l* or deputy, while enforcing the original writ of possession in matter of the deceased *vs.* Mrs. W'w Remick and *al.*, No. — of the U. S. circuit court. The marshal*l* actually put said Brulard in possession of the whole
32 plantation in its entirety, in accordance with the terms of the writ. All parties on the place were notified to vacate in favor of Mrs. W'w Cavailhez, and this was actually complied with. Since the execution of the said writ plaintiff never had any control, direct or indirect, of said plantation, and the parties residing thereon, laborers, to wit, Louis Montgomery, Daniel Montgomery, and A. de Armentor, were allowed to remain on the place, by contract with said Brulard, from the date of said writ of possession for the term of one year, as will more fully appear by reference to the written contracts annexed hereto, marked A & B. The carpenter, Jean Brun, was then ordered to vacate by the deputy marshal*l*, but thereupon made an agreement with Brulard to continue the necessary repairs to the house and other buildings, with the stipulation that Mrs. W'w Cavailhez would pay him for all the work done by him since

execution of writ. I went, as the agent of W'w Cavailliez, and remained several days on the plantation, and we were then in the uncontested possession of whole plantation in its entirety. Shortly after suit was brought by said Lacassagne in the U. S. circuit court of eastern district of Louisiana praying for injunction and claiming falsely the possession of said plantation and being simply disturbed, as alleged, in his enjoyment. The fact was that since the
33 execution of the first writ of possession he never had a shadow of possession, but attempted fraudulently to show that his employees had been constantly and were still in possession under his authority. Said pl'ff then took the *the* testimony of two of said laborers, ignorant people, to show that they had never been interfered with in holding possession for him, while the truth is that the said laborers (Louis Montgomery and Daniel Montgomery, whose ordinary marks are affixed to the affidavit) have been, like the others, ordered to vacate, and subsequently contracted with Brulard to work on the place, by the year, for Mrs. W'w Cavailhez. They are at present cultivating, under the superintendence of said Brulard, under said contracts (Exh. A & B); told the other laborer, A. de Armentor; he refused to subscribe to plaintiff's affidavit, because of the facts above stated. At first their agreement with Brulard was verbal, but since the injunction suit or bill in equity aforesaid the said laborers, Louis & Daniel Montgomery and A. de Armentor, have executed the aforesaid labor contracts, and hence the plaintiff, Lacassagne, has avoided again to take their affidavits in the present suit, instituted in the western district of Louisiana, and resorts again to the stale affidavits of said Louis and Daniel Montgomery, which come in such questionable shape.

Further, the carpenter, Jean Brun, was on the plantation repairing the house when the U. S. marshal executed the first writ of
34 possession, and said Brun was notified to vacate; did cease to work on said place for complainant, Lacassagne, then and there, and afterward, by contract with Brulard, continued as aforesaid to work to necessary repair- for Mrs. W'w Cavailhez. This he did publicly and openly, to my personal knowledge and to the knowledge of other persons present. His affidavit to the contrary was false and fraudulent, and a prosecution for perjury was therefor instituted against him before a criminal court of the parish of Vermillion. Owing to these fraudulent devices a new writ of possession was issued in matter of Mrs. W'w Cavailhez *vs.* W'w Remick & *als.*, after the death of said Mrs. W'w Cavailhez; and thereupon, as appears by the return of the U. S. marshal, I, as executor, was formally put in possession of said plantation, of which, however, my agent, Brulard, had always had full corporeal possession in its entirety, as above related; and thereupon all the persons on said place, the said Brun and his co-carpenter and the three laborers aforesaid, were ordered to vacate, and then and there the said three laborers executed the said written contracts (Exh. A & B), which are but the written evidence of the verbal contracts under which they had remained on the premises since the execution of the first writ of possession. No prosecution- for perjury were made against said colored laborers,

Daniel and Louis Montgomery, because they begged to be
35 excused, affirming that their affidavits were made in error.
Since the execution of said 2nd writ of possession, I, defendant, as executor and as sole heir and universal legatee of Mrs. W'w Cavailliez, have held and now hold actual possession of the whole of said plantation in its entirety. Everybody living thereon is there by special contract with me, and nobody not authorized by me can put his foot thereon. The affiant, Stanberry, never appears there. The carpenter, Brun, has disappeared, and never shows himself, and said three laborers are working as my employees under my agent, Brulard.

For further testimony I refer to my affidavit on file in the injunction suit in the eastern district of La., and to the affidavit of Mrs. W'w Cavailhez also on file there.

I refer also to the affidavits of Felix Brulard, living on the place since execution of first writ of possession, and to those of E. Romero and A. de Armentor.

I was born in Switzerland; am a Swiss citizen, and have never been naturalized as a citizen of any other country.

(Sig.) FS. CHAPUIS.

Sworn to and subscribed before me this 22nd day of May, A. D. 1886.

[Seal M. Voorhies, Notary Public, P'sh of Orleans.]

(Sig.) M. VOORHIES,
Notary Public.

Endorsement: 6. F. Chapuis.

36 *Minutes of Court.*

MONDAY, *July* 19*th*, 1886.

Court met pursuant to adjournment.

LAURENT LACASSAGNE
vs.
F. CHAPUIS, Testamentary Executor & Individually.
} No. 139. Prayer for Injunction Denied. In Equity.

TUESDAY, *July* 19*th*, 1887.

Court met pursuant to adjournment.

LAURENT LACASSAGNE
vs.
F. CHAPUIS *et als.*
} No. 139.

This cause came on to be heard upon the demurrer and plea, and was argued by counsel and submitted and same taken under advisement.

1st Decree.

U. S. Circuit Court.

LAURENT LACASSAGNE
vs.
F. CHAPUIS, Test'y Ex't'r & Individually. } No. 139. In Equity.

This cause came on to be heard on application for injunction, on affidavits filed, and on argument of counsel for complainant and for defendants, and, considering same, the court concludes
37 that the application for injunction should be denied, and it is therefore ordered, adjudged, and decreed that the restraining order hereinbefore made be set aside and vacated, and that the prayer for injunction be denied, this cause having by agreement been submitted to the court to be decided at any subsequent time in chambers.

Done & signed in chambers this August 19th, A. D. 1886.

[Seal U. S. Circuit Court (Eagle Bird) for the Western Dist. of La.]

(Sig.) ALECK BOARMAN,
U. S. Judge.

Endorsement: No. 139. Laurent Lacassagne *vs.* F. Chapuis, test'y ex't'r. Decree. Filed Aug. 25th, '86. E. J. Nolan, d'y cl'k.

2nd Decree.

U. S. Circuit Court, Western Dist. La. In Equity.

L. LACASSAGNE
vs.
F. CHAPUIS, Ex't'r, *et al.* } No. 139.

In this case, by reason of the law, it is ordered, adjudged, & decreed that demurrer be sustained, & that plaintiff's bill be dismissed.

38 Done & signed at Shreveport this the 8th day of August, 1887.

(Sig.) ALECK BOARMAN, *Judge.*

Endorsement: No. 139. L. Lacassagne *vs.* F. Chapuis, ex't'r, *et al.* Decree. Filed Aug. 8th, '87. E. J. Nolan, d'y cl'k.

39 U. S. Circuit C't, Western District of Louisiana.

LAURENT LACASSAGNE
vs.
FRANCOIS CHAPUIS, Testamentary Executor of Jeanne Caroline Cave Cavailhez, Deceased. } No. —.

To the hon. the circuit court of the United States for the western district of Louisiana:

The petition of Laurent Lacassagne with respect represents—

That a final decree was rendered in this cause on the eighth day of August, 1887, sustaining the demurrer of the defendant, Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, to the bill of complaint and dismissing said bill.

Your petitioner has been advised that there is error in the said decree, whereby he is injured, and he prays for an order allowing him an appeal therefrom to the next term of the Supreme Court of the United States, returnable on the second Monday of October next, and that the defendant, Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, be cited according to law, the said appeal not to act as a supersedeas, and upon such bond as may be proper and conditioned as the law requires.

ALFRED GOLDTHWAITE,
Solicitor for Lacassagne.

Order.

The appeal prayed for is allowed upon the petitioner, Laurent Lacassagne, giving bond in the sum of five hundred dollars, according to law, the appeal not to act as a supersedeas.

In chambers, at Macon, August 7th, 1888.

L. Q. C. LAMAR,
Associate Justice of the Supreme Court of the United States, Assigned to the 5th Judicial Circuit of the United States.

41 & 42 [Endorsed:] No. 139. U. S. circuit court, western district of Louisiana. Laurent Lacassagne *vs.* Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez. Petition for appeal. Filed Aug. 31st, '88. E. J. Nolan, d'y cl'k. A. Goldthwaite, sol'r for pl'ff.

43 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.

The President of the United States to Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and order for appeal entered and filed in the clerk's office of the circuit court of the United States for the fifth circuit and western district of Louisiana, in a suit wherein Laurent Lacassagne, complainant, is appellant and Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, defendant, is appellee, to show cause, if any there be, why the decree rendered against the said Laurent Lacassagne, as in said petition and order for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, associate justice of the

Supreme Court of the United States, this 7th day of August, in the year of our Lord one thousand eight hundred and eighty-eight.

L. Q. C. LAMAR,
Judge *Associate Justice of the Supreme Court of the United States, Assigned to the Fifth Judicial Circuit of the United States.*

44 [Endorsed:] United States circuit court, western district of Louisiana. No. 139. Laurent Lacassagne *vs.* Francois Chapuis, testamentary executor, &c. Citation. Filed Aug. 31st, '88. E. J. Nolan, d'y cl'k.

Marshal's Return.

Received the within citation on the first day of September, 1888, and on the sixth day of the same month and year I made service of same by handing a certified copy of within citation to Mrs. Charles Leobnitz in person, a person over the age of 14 years and living in the same house with Francois Chapuis, said service having been made at the usual domicil of said Francois Chapuis in the parish of Vermillion, La.

S. C. PRICE,
D'y U. S. Marshal.

Filed Sept. 18th, '88.
E. J. NOLAN, *D'y Cl'k.*

On the 2ond day of September I served a certified copy of this citation on A. H. Leonard, attorney, by leaving same in his hands; service made in city of Shreveport, La.

GEO. G. WEAKS, *D'y Mar.*

Filed Sept. 3rd, '88.
E. J. NOLAN, *D'y Cl'k.*

45 UNITED STATES OF AMERICA:

Know all men by these presents that we, Laurent Lacassagne and W. S. Benedict, are held and firmly bound, jointly and severally, unto Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, his heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 28th day of July, in the year of our Lord eighteen hundred and eighty-eight.

Whereas the said Laurent Lacassagne having heretofore, to wit, on the 28th day of July, 1888, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the eighth day of August, 1887, by the circuit court of the United States for the fifth circuit, holding sessions in and for the western

district of Louisiana, in the suit of Laurent Lacassagne *vs.* Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, No. — of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden Laurent Lacassagne shall prosecute his said appeal to effect and shall answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

L. LACASSAGNE, [L. S.]
By A. GOLDTHWAITE. [L. S.]
W. S. BENEDICT. [L. S.]

Signed, sealed, and delivered in the presence of—

—— ——.

46 [Endorsed:] No. 139. United States circuit court, western district of Louisiana. Laurent Lacassagne *vs.* Francois Chapuis, testamentary executor, &c. Bond for appeal. Filed August 31st, 1888. E. J. Nolan, d'y clerk.

UNITED STATES OF AMERICA, }
Eastern District of Louisiana, } *ss:*

Personally appeared W. S. Benedict, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides at 352 Josephine St., city of New Orleans, and is worth the full sum of five hundred dollars over and above all of his debts and liabilities and property exempt from execution.

W. S. BENEDICT.

Subscribed and sworn before me this 20th day of July, 1888.

[Seal Richard H. Downing, Notary Public, Parish of Orleans, La.]

R. H. DOWNING,
Notary Public.

I approve the foregoing bond & sureties.

L. Q. C. LAMAR,
Associate Justice of the Supreme Court of the United States.

47 THE UNITED STATES OF AMERICA, }
5th Circuit, Western District of Louisiana. }

In Circuit Court.

I, John W. Wheaton, clerk of the said court, hereby certify that the above and foregoing forty-eight pages, from 1 to 48, inclusive, contain a true, faithful, and complete transcript of all documents filed, orders made, proceedings had, & evidence adduced in case of Laurent Lacassagne *vs.* F. Chapuis, testamentary executor & individually, in equity, No. 139 on the docket of said court.

Given under my hand & seal of office this the — day of ——, A. D. 1888.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. W. WHEATON, *Clerk.*

UNITED STATES OF AMERICA,
5th Circuit, Western District of Louisiana.

I, Aleck Boarman, judge of the circuit and district courts, 5th circuit and western district of Louisiana, the same being a court of record, do hereby certify that John W. Wheaton, whose official signature and seal are affixed to the foregoing certificate, is and was at the time he signed the same the clerk of said United States circuit and district courts, duly commissioned and qualified.

48 I further certify that the foregoing attestation of the said clerk is in due form and by the proper officer and is entitled to full faith and credit.

This done & signed in — this the — day of ——, A. D. 1888.

ALECK BOARMAN, *Judge.*

UNITED STATES OF AMERICA,
5th Circuit, Western District of Louisiana.

I, John W. Wheaton, clerk of the United States circuit and district courts, 5th circuit and western district of Louisiana, do hereby certify that the Honorable Aleck Boarman, whose genuine signature is signed to the foregoing certificate, is and was at the time he signed the same judge of the circuit and district courts of the United States for the 5th circuit and western district of Louisiana, duly commissioned and qualified.

Witness my hand and the seal of the said court this the — day of ——, A. D. 1888.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. W. WHEATON, *Clerk.*

Endorsed on cover: Case No. 13,234. W. Louisiana C. C. U. S. No. 188. Laurent Lacassagne, appellant, *vs.* Francois Chapuis, testamentary executor of Jeanne Caroline Cavé Cavailhez, deceased. Filed October 8, 1888.

Office Supreme Court U. S.
FILED.
JAN 25 1892
JAMES H. McKENNEY.
CLERK.

Supreme Court of the United States,

OCTOBER TERM, 1891.

Term No. 188.

LAURENT LACASSAGNE, APPELLANT,

vs.

FRANCOIS CHAPUIS, Testamentary Executor of Jeanne Caroline Cave Cavailhez, deceased, APPELLEE.

BRIEF FOR APPELLANT.

ALFRED GOLDTHWAITE,
Counsel for Appellant.

Supreme Court of the United States,

OCTOBER TERM, 1891.

Term No. 188.

LAURENT LACASSAGNE, APPELLANT,

vs.

FRANCOIS CHAPUIS, Testamentary Executor of Jeanne Caroline Cave Cavailhez, deceased, APPELLEE.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

On the 15th of April, 1886, this appellant filed his bill in the Circuit Court of the United States for the Western District of Louisiana to review and vacate a decree which had been rendered on the equity side of that Court on the 11th day of January, 1886, in a certain cause entitled Jeanne Caroline Cave, widow, vs. Marceline Cavailhez, widow, and numbered 33 on the docket of said Court. The gravamen of appellant's bill consists of the averment that the said decree rendered in said cause,—*to which he was not a party, and in which he was not heard*,—will, if permitted to remain in force, destroy his rights in a certain plantation particularly described in his bill, to which he had a good title, and of which he was in possession when

said decree was rendered. The appellee demurred to appellant's bill, and after a hearing thereon the demurrer was sustained and the bill dismissed. Whether the decree dismissing the bill, which is assigned as error, was properly rendered or no depends upon this question: Is the appellant, upon the admitted facts as recited upon the face of his bill, entitled to the relief he seeks at the hands of a court of equity? The leading facts, as recited upon the face of appellant's bill, and the exhibits thereto, are in substance as follows. *Prior to the institution of said suit numbered 33 in said circuit court,* appellant and one Albert G. Maxwell held a mortgage executed by Marceline Cavailhez, widow of Clark H. Remick, deceased, upon the plantation in question, which mortgage was duly recorded in the parish of Vermillion, where the land lay, prior to the institution of such suit which was not begun until the 5th of March, 1884. Through judicial proceedings instituted to enforce said mortgage in the district court of the parish of Vermillion, appellant and said Maxwell acquired title to the land in question by a deed executed to them by the sheriff of said parish on the 15th of August, 1885. On the 22nd of October, 1885, appellant purchased the interest of said Maxwell in said land, and on that day a deed was executed by said Maxwell conveying such interest to him. Thus armed with a complete title to the entire property, based upon a judicial proceeding in the state court where the land lay, appellant went into possession of the land in question, and continued in possession until his servants and agents were forcibly ejected therefrom, on the 5th of February, 1886, by the deputy marshal of the United States, acting under an order of said circuit court, made on the 2nd of February, 1886, in said cause numbered 33 on the docket of said court. In such order the marshal was "commanded to eject defendant (Marceline Cavailhez, widow,) and those who may be holding said property described as aforesaid under the said defendant, by private deed of transfer or otherwise, since the institution of aforesaid

suit, to wit, March 5th, 1884, and during the pending of said suit." To this order of ejectment was annexed a copy of the decree now sought to be vacated, which is in the following terms: "*5th Circuit Court, West. Dist. La. In Chancery.*

JEANNE CAROLINE CAVE, widow,
vs.
MARCELINE CAVAILHEZ, widow, etc.

This case came up for trial and the parties adduced their evidence. The said evidence and the law being in favor of oratrix, Jeanne Caroline Cave, widow of Baptiste Cavailhez, deceased, as to her claims as surviving widow and creditor of his succession. It is ordered, adjudged and decreed:

1st. That the sale made on the 19th of August, 1869, by Baptiste Cavailhez and Ernestine Dioz to Clark H. Remick of the following described property be annulled and avoided, the said property in said act of sale being described as follows, to wit:

'First. A town lot in Abbeville, parish of Vermillion, being No. 33 of plat of said town, with buildings and improvements, said lot bounded west by Jefferson street, north by Concordia street, south by lot No. 34, and east by lot No. 41.

Secondly. A certain plantation situated on the east side of Bayou Vermillion, in the aforesaid parish (Vermillion), with a front of ten arpents on said bayou by forty in depth, with buildings and improvement, bounded west by Bayou Vermillion, east by public lands, south by property of Numa St. Julien, and north by property of Euclide Roy, together with said plantation, mules, horses, milch cows, carts, wagons, tools of husbandry, and other plantation paraphernalia.'

2nd. It is ordered and decreed that the said oratrix and plaintiff in bill, Jeanne Caroline Cave, widow, be, and is hereby recognized as the lawful widow of Baptiste Cavailhez, and as such that she be, and is hereby, entitled to and decreed to be the owner of the undivided half of the property above described.

3rd. It is further ordered that the act of donation or dowry from Baptiste Cavailhez and Ernestine Dioz to Marceline Cavailhez, made on the 19th of August, 1869, be, and is hereby decreed to be null and void and of no effect, and that Ernestine Dioz, the mother of defendant, Marceline Cavailhez, never was the lawful wife of Baptiste Cavailhez.

4th. It is further ordered and decreed that the said oratrix and plaintiff in bill have judgment against the estate of Baptiste Cavailhez in the sum of five thousand three hundred and ten dollars, with legal interest from the 25th of February, 1884.

That her mortgage to secure the aforesaid sum and interest upon the property of Baptiste Cavailhez, to take effect from the 13th of April, 1863, be recognized and enforced.

And because the law and evidence is in favor of the defendant, Marceline Cavailhez, widow of Clark H. Remick, and as against the oratrix and plaintiff in bill, as to the reconventional demand for improvements she placed on the plantation. It is further decreed that the defendant Marceline Cavailhez, widow of C. H. Remick, have judgment against the oratrix for the sum of fifteen hundred dollars; and, to ensure the payment thereof, it is further decreed that she, the said defendant, have a privilege and mortgage on the property above described."

The facts recited upon the face of this decree, when taken in connection with the allegations of the bill, clearly disclose the character of the contention between the parties, and their legal relations to each other.

This appellant claims title to the land in question under a conveyance from Marceline Cavailhez, who in turn holds under a conveyance made to her of this land by her father Baptiste Cavailhez and her mother Ernestine Dioz. The conveyance from the said Marceline was made to appellant and recorded in the parish where the land lies, *prior to the institution of the suit in which the decree was rendered which the bill in the present case seeks to review.*

The appellee, on the other hand, is the executor of Caroline Cave Cavailhez, who claimed the interests in the land in question, as widow and creditor of the succession of Baptiste Cavailhez, which the decree rendered in No. 33 established as against the title of Marceline Cavailhez, the grantor of appellant. In other words the attempt made in case No. 33 is to cut off the rights of appellant as alienee of Marceline Cavailhez by an adjudication that he derived no title from her in a proceeding to which he was not a party. And appellant has been actually put out of possession of the land without a hearing of any kind, and without any opportunity to show that his rights are superior to those of Jeanne Caroline Cave.

A BILL IN THE NATURE OF A BILL OF REVIEW THE OBVIOUS AND ONLY REMEDY.

The statement of the case which has now been made, clearly discloses the character of the wrong which appellant has suffered in having his rights practically destroyed by a decree rendered against his grantor in an equitable proceeding to which he was not a party. The general rule is that a party is neither bound nor prejudiced by a decree rendered in a proceeding in which he was not cited to appear, and when an attempt is made to enforce such a decree to the prejudice of his rights he is permitted, as a general rule, to resist its validity upon the ground that the Court was without jurisdiction as to him. But the peculiar manner in which this decree has been rendered and enforced precludes appellant from the right to resist its validity in any independent proceeding whatsoever, In such a case the obvious and only remedy is by a bill in the nature of a bill of review. The rule is thus laid down in Story's Equity Pleading, § 409: "No persons, except the parties and their privies in representation, such as heirs, executors and administrators, can have a bill of review, strictly so called. ***But other persons in interest, and in privity of title or estate, who are aggrieved by the decree, such as devisees, and remainder-men, are, as we shall***

presently see, entitled to maintain an original bill in the nature of a bill of review, so far as their own interests are concerned. Of course, no persons, but persons having an interest, are entitled to maintain a bill of review. And even persons having an interest in the cause, if not aggrieved by the particular errors assigned in the decree, cannot maintain a bill of review, however injuriously the decree may affect the rights of third persons."

"This rule (that a bill of review can only be maintained by parties or privies), however, is now relaxed, and those who were not parties, and who may be affected by decrees, may file such bills. They are then properly termed supplemental bills in the nature of a bill of review. Singleton vs. Singleton, 8 B. Mon., 344; Webb vs. Pell, 3 Paige, 368; Clarkson vs. Morgan, 6 B. Mon., 441." See the important note to Bank of U. S. vs. Ritchie et al. Book 8, pp. 890-892, Co-operative Pub. Co.'s ed. of the reports of this court. In the case of Whiting et al. vs. The Bank of U. S. 13 Peters, pp. 7-16, it was held that a supplemental bill in the nature of a bill of review would lie in favor of one who had not been made a party to the decree sought to be reviewed, where it appeared that he had suffered harm from such omission. In that case a certain lien or security had been given to one Breckenridge on a certain lot which was subsequently mortgaged to the Bank of the U. S. When the Bank filed its foreclosure bill it failed to make Breckenridge a party. Long after the sale those who were parties to the decree filed a supplemental bill in the nature of a bill of review. While the court refused to sustain their bill upon the grounds set up by them, it held that if Breckenridge had suffered any wrong he had a clear right to file such a bill. It is therefore clear upon the authorities that although a person may not have been a party to the decree sought to be reviewed, he has a clear right to file a bill in the nature of a bill of review, provided he can show (1) that he had an interest in the subject matter, (2) that he has been aggrieved by the decree. If this bill contained nothing more than this, its equity would

be complete. As the bill is to correct an error of law it was unnecessary that the leave of the court should have been given for its filing. Young vs. Henderson, 2 Haywood, 189; Ricker vs. Powell, 100 U. S. 105. The bill was, however, filed by consent signed by the judge which, in any event would remove all question. See record, p. 5.

II.

The bill contains the distinct averment that the decree in question was obtained by fraud, not only on account of the failure of complainant, with full knowledge of his rights, to make him a party to her suit, but also because the "said Jeanne Caroline Cave Cavailhez, the plaintiff therein, was not a citizen of France, as she falsely alleged herself to be to give this honorable Court jurisdiction of the parties, but was a citizen of Louisiana, residing at New Orleans; that if it be true, as your orator has been informed and believes and charges, it was a fraud practiced upon this Court, and that the proceedings in said suit No. 33 on the docket of this Court are utterly null and void, and should be so pronounced and decreed to be." Nothing is better settled than the fact that when a decree is to be impeached for fraud, it should be attacked either in a bill of review, or in a bill in the nature of a bill of review. See Terry vs. Commercial Bk. of Ala. 92 U. S. 454. A failure to make a person a party to a suit whose interests may be affected by the decree may constitute such a fraud as will authorize relief by a bill in the nature of a bill of review. The general doctrine is thus stated in Cooper's ed. of Daniell's Ch. P. and P. 5 ed. vol. 11, p. 1585, note 4. "A decree obtained without making the persons parties to the suit whose rights are affected is void as to those parties, and the remedy is an original bill in the nature of a bill of review. Dunklin vs. Harvey, 56 Ala. 181." In that case (p. 181) the Court say: "A decree, obtained without making those persons parties to the suit in which it is had, whose rights are affected thereby,

is void as to those parties; and even a purchaser under it, having notice of the defect, is not protected by such decree.—Story's Eq. Pl. § 427. It is shown in the same author, section 426, that the proper mode of impeaching a final decree for fraud, at the suit of a stranger, is an original bill in the nature of a bill of review. There is no doubt of the jurisdiction of courts of equity to grant relief against a former decree, where the same has been obtained by fraud and imposition; for those will infect judgments at law, and decrees of all courts; but they annul the whole in the consideration of courts of equity."

This bill therefore charges a two fold fraud. The first consists of fraud practiced by the testatrix of appellee in making a false allegation as to her citizenship in order to give the Court jurisdiction; the second consists of the attempt to destroy appellant's rights in the property in question by failing to make him a party to the proceedings. "If a decree has been obtained by fraud, it may be impeached by original bill, without the leave of the Court." Daniell's Ch. P. and P. Cooper ed. (5th) vol. 11, p. 1584, note 4.

Upon an admission of all the facts as made by the demurrer, appellant's bill should have been sustained. The final decree, sustaining demurrer and dismissing the bill, assigned as error, was wrongfully rendered.

First. Because the willful failure to make him a party to a proceeding in which his rights were to be passed upon was sufficient of itself, to authorize his bill.

Second. Because either of the allegations of fraud made in appellant's bill is sufficient, if true, to authorize the relief which he prays.

ALFRED GOLDTHWAITE,
Counsel for Appellant.

Office Supreme Court U. S.
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JAMES H. McKENNEY
CLERK

SUPREME COURT OF THE UNITED STATES.

October Term, 1891.

No. 188.

LAURENT LACASSAGNE, APPELLANT,

versus

FRANCOIS CHAPUIS, EXECUTOR.

BRIEF AND ARGUMENT OF COUNSEL FOR DEFENDANT AND APPELLEE.

A. H. LEONARD,
MORRIS MARKS,
Of Counsel for Defendant and Appellee.

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BRIEF AND ARGUMENT OF COUNSEL FOR DEFENDANT AND APPELLEE.

Statement of Pleadings.

Complainant alleges he is owner of a certain plantation situated in the parish of Vermillion, Louisiana. That he with A. G. Maxwell purchased same at a sheriff's sale made in suit Maxwell vs. Marceline Cavailhez, on August 15, 1885, and subsequently acquired Maxwell's interest.

That Jeanne Caroline Cavé Cavailhez, alleging herself to be a citizen of France and the widow of Baptiste Cavailhez, instituted on March 5, 1884 (some fifteen months before complainant purchased), a suit in the Circuit Court of the United States for the western district of Louisiana against Marceline Cavailhez, widow of C. H. Remick, deceased, in her own right, and as

tutrix of the minor children, of herself and said Remick, and as such administering his estate.

That therein said Jeanne claimed, as widow in community of Baptiste Cavailhez, to be the owner of an undivided half interest in said plantation, and that the other half interest was subject to a mortgage in her favor to secure the amount of $5310 due her by the succession of said Baptiste Cavailhez, and that therein said Jeanne prayed for a decree declaring her to be the owner of an undivided half interest in said plantation and subjecting the other half to her mortgage, and also for process against said Marceline in her own right and as tutrix, etc.

That complainant, Lacassagne and said Maxwell were mortgage creditors of Marceline Cavailhez, by mortgage duly recorded before said Jeanne instituted suit, and that such recordation operated as notice to said Jeanne that no right or interest of complainant or Maxwell could be passed on or affected by her suit or any decree therein rendered. That the said Circuit Court was without jurisdiction to entertain the said suit of Jeanne because she was not a citizen of France, but a citizen of Louisiana, and that the proceedings in her suit are null and void and should be decreed so to be.

That the judgment rendered in her suit decreed her to be the widow of Baptiste Cavailhez, and as such, owner of an undivided half of said plantation and entitled to $5310, with interest, from the succession of said Baptiste, secured by mortgage on all his property, and directed the enforcement of such mortgage.

That on February 2, 1886, a petition was presented to said Circuit Court for a writ of possession under said decree, which was granted, and a writ of possession issued directing the United States Marshal to take possession of said plantation and to eject the said Marceline Cavailhez and those who may be holding under her by deed or other-

wise since the institution and during the pendency of the suit against her, and further directing the Marshal to put said Jeanne in full possession of said plantation.

That such writ was not authorized by said decree issued improvidently, and is null and void.

That writ was *executed* on February 5, 1886, as shown by return of Marshal thereon, viz: "By serving the writ and copy of judgment on Alfred Armenteur, who was living in the house, and had charge of the property (he being a major), and *I took possession* of said plantation and improvements, and then placed them in possession of F. Brulard, as agent of Jeanne Caroline Cavé, widow of Baptiste Cavailhez."

That the orator, L. Lacassagne, was in possession of said plantation as owner by his laborers, servants and employés when the United States Marshal pretended to execute said writ of possession. That one F. Brulard did come upon said plantation and does now occupy a portion of the dwelling on said plantation, but that the carpenters and laborers have been continuously and still are in service and pay of your orator, and that he, said Lacassagne, is deterred from going upon said plantation and exercising his rights of ownership by the violence and threats of said Brulard.

That your orator *claims* to be in possession, though his possession is interfered with and disturbed by said Brulard, acting under direction and advice of Francois Chapuis.

That the orator, Lacassange, was not a party to the said suit of Jeanne, and is not bound by any order of court until he has an opportunity to be heard.

That though the acts specified were in the name of Jeanne Caroline Cavé Cavailhez, yet she was prompted and instigated by said Chapuis, who was named executor and universal legatee by her last will.

That Brulard is agent of and under control of Chapuis; hat the alleged writ under which he has taken partial possession is null and void for want of jurisdiction.

That the plantation is deteriorating in value, and the season for planting is passing, and irreparable injury is being done to him Laccassagne.

That an injunction *pendente lite* is necessary to restrain the said Chapuis, as testamentary executor and individually, and his agents from interfering with the possession of complainant—Lacassagne—or molesting him, his agents and employés on said plantation.

That a restraining order should issue and said injunction should be made perpetual.

The prayer is, that the suit instituted by said Jeanne be declared an absolute nullity and all proceedings under it void, because it was brought in a court without jurisdiction over the parties thereto.

That in case said suit is held to have been properly brought, then that it be decreed to have no force or effect as against him, Laccassagne, he not being a party thereto and the decree not operating against him; that the writ of possession under which the Marshal and F. Brulard have been partially placed in possession is absolutely null and void, and the possession of Brulard illegal; that he be ordered to vacate the premises occupied by him and to remove therefrom forthwith; that an injunction issue *pendente. lite*, to be made perpetual on final hearing, commanding Chapuis individually and as executor and his agents, particularly Brulard, to desist from molesting complainant in the possession of said plantation, that a restraining order issue, and for subpœna to Chapuis as executor and individually.

The record in case of Jeanne Cavailhez vs. Marceline Cavailhez is made part of the bill for reference, and a portion of same is in the record in this court.

A restraining order was granted, but when the application for an injunction *pendente lite* came on to be heard it was denied and the restraining order was vacated. Record, p. 19.

The plaintiff demurred by a general demurrer, which was on a hearing sustained and plaintiff's bill dismissed. Thereupon plaintiff appealed.

Statement of Case.

The following facts appear from the bill itself and from the record in suit of Jeanne Cavailhez vs. Marceline Cavailhez, referred to in bill a portion of which is before this court. See judgment record, p. 9; writ of possession and return thereon (Record, p. 8), and further return (Record, p. 10.)

On March 5, 1884, Jeanne Caroline Cavé Cavailhez, a citizen of France, the widow and surviving partner in community of Baptiste Cavailhez, deceased, instituted in the Circuit Court of the United States for the western district of Louisiana, a suit against Marceline Cavailhez, the illegitimate daughter of Baptiste Cavailhez, alleging that she, Jeanne, was owner of an undivided half of the plantation in controversy in case at bar and of certain other property, and that she held a mortgage on the other half to secure a debt of $5310 due her by the succession of her deceased husband, Baptiste Cavailhez.

That a sale of said property made by said Baptiste Cavailhez and Ernestine Dioz to Clark H. Remick, the husband of Marceline Cavailhez, is a nullity. That an act of donation from said Baptiste and said Ernestine to Marceline is also a nullity, and that Ernestine Dioz, the mother of Marceline, was not the wife of Baptiste Cavailhez.

In this suit Jeanne prayed for a judgment declaring her to be owner of the undivided half of said property, recognizing her debt and mortgage and directing enforcement

thereof, and decreeing the nullity of the sale to Remick and the donation to Marceline.

"A judgment was rendered (Record, p. 9) which shows conclusively that the allegations made by Jeanne were judicially established, and that she was entitled to and was granted all the relief she prayed for. Subsequently, in execution of this judgment, a writ of possession issued by which the Marshal was commanded to put said Jeanne in possession of said property, which he did.

When the Marshal came to execute the writ he found the property in controversy in possession of the employés of complainant, Lacassagne. It appears that during the pendency of the suit instituted by Jeanne against Marceline, one Maxwell brought suit against Marceline and obtained judgment against her, on which an execution issued under which said property was seized as the property of Marceline, and sold to Maxwell and Lacassagne.

That Lacassagne subsequently acquired Maxwell's interest, and thus was in possession of said property through his employés, when the Marshal came to execute the writ of possession aforesaid.

But the possession of Lacassagne was divested by the Marshal, who took possession of the said property as he was commanded to do, and put it into the possession of F. Brulard, the agent of Jeanne Cavailhez, who held such possession when the suit at bar was instituted in court *a quo*.

These facts, apparent on an analysis of complainant's bill, are clearly proved by the exhibits thereto annexed, particularly the writ of possession and the two returns of the Marshal thereon (Record, p. 8, 10,) and are also established by the affidavits offered on the trial of the motion for preliminary injunction. (Record, pp. 11 to 18 inclusive.)

When the suit was originally instituted by Lacassagne he was out of possession, and his bill is an attempt to regain possession by means of an injunction, a remedy

which is never granted for that purpose. The function of that writ is to afford preventive relief only and not to correct injuries already committed, or to restore parties to rights of which they have already been deprived.

It can not be used for the purpose of taking property out of the possession of one party and putting it into the possession of another.

Where title is disputed, equity will not decide. Complainant has a full, adequate and complete remedy at law, and therefore can not come into a court of equity.

Thn learned counsel of complainant seem to think that because he was in possession when judgment was rendered in suit of Jeanne Cavailhez vs. Marceline Cavailhez, and when the Marshal executed the writ of possession, he, complainant, not being a party to that suit could not be evicted under any process therein issued.

If the contention were well founded it would avail complainant nothing. As a matter of fact he was evicted, and must now vindicate his rights, if any he have, by the ample remedies which the law gives. But it is not well founded. A pending suit is notice to all the world.

During the pendency of the suit of Jeanne vs. Marceline Cavailhez, no one could acquire any rights from Marceline to the prejudice of Jeanne. Counsel ignore the fact alleged in the bill that the rights asserted by complainant were acquired from Marceline while that suit was pending against her. Such being the case it is clear that his possession, so far as it affected Jeanne, was the possession of Marceline, and that the writ of possession was properly issued and executed. Civil Code La art 2453 97 2596-105

If complainant was evicted and the plantation in controversy put into the possession of Jeanne Cavailhez, a court of equity can not interfere with *un fait accompli*, nor can it give to complainant any relief until he has established his title (which on the face of his own bill is more than doubtful) by an action at law.

If complainant is in possession, this action is not an equitable action. It is what is known in the jurisprudence of Louisiana as a third opposition. "This opposition is a demand brought by a person not originally a party in the suit for the purpose of arresting the execution of an order of seizure, or judgment rendered in such suit, or to regulate the effect of such seizure on what relates to him." La. Code Practice, Art. 401.

"A third opposition is a suit at law. "The remedy needs no formal chancery proceeding, and is the most speedy and appropriate mode of obtaining relief. It is a short, summary proceeding which has no element of equitable right or procedure." Van Norden vs. Morton, 99 U. S. 381."

The decree appealed from should be affirmed.

Respectfully submitted,

A. H. LEONARD,
MORRIS MARKS,
Of Counsel for Defendant and Appellee.